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In Reply Refer To:

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Information Bulletin No. WY-99-39

To: Field Managers
From: State Director
Subject: Endangered Species Act (ESA) Section 7 Consultation for Grazing Permit Renewals

BACKGROUND

As you all are acutely aware, the BLM in Wyoming will be reviewing and evaluating over 1,000 livestock grazing permits for renewal during this year (1999). Given the fact these permit renewals are subject to NEPA documentation and other resource reviews, this will be an enormous workload for the Field Offices. With this in mind, we are trying to find procedural ways to legitimately ease the workload burden on both the BLM and U.S. Fish and Wildlife Service (FWS) staffs.

On December 9, 1998, the WSO staff met with the Wyoming Field Supervisor of the U.S. Fish and Wildlife Service and his staff to discuss the grazing permit renewal requirements, and to develop a streamlined process for performing the necessary Endangered Species Act (ESA) Section 7 consultation procedures. Both agencies felt individual consultations did not have to be performed for every permit renewal. The FWS also expressed a desire to be directly involved in the permit review and evaluation effort in each BLM Field Office.

During this meeting it was decided the WSO would write a letter to the FWS requesting:

- 1) A list of the proposed and listed Threatened and Endangered (T&E) species, and candidates, of concern for each respective BLM Field Office in Wyoming.
- 2) A FWS contact person for each BLM Field Office to work with during this consultation process.
- 3) Any evaluation criteria or operational guidelines deemed appropriate and acceptable to assess the effects of Public Land livestock grazing on proposed and listed species.

This letter was sent on December 10, 1998, and the FWS responded on January 13, 1999, (Attachment 1) with the following information:

- 1) Pat Deibert will be the primary contact (i.e., lead) for all BLM field offices. Her phone number is (307) 772-2374-ext.26. Other FWS personnel may ultimately be assigned to serve on individual field office ID teams.
- 2) a species list for each BLM field office was presented (Attachment 2).

3) Species/habitat descriptions (Attachment 3)

4) Survey guidelines for mountain plover and Preble's meadow jumping mouse (Attachment 4).

5) Example Biological Assessments (BAs) for some National Forests' grazing programs in Wyoming (Attachment 5).

PROCEDURES

The process described below was agreed upon as a valid and streamlined approach that should save considerable time and effort for both of our agencies, and still meet the requirements of law and regulation. By following these procedures each office should be able to reduce the number of consultations from 100 or more per office to five or fewer per office. This process should remain in place throughout the coming years, and may be subject to modification as experience and changing requirements dictate. This process will also likely be a slightly different exercise for each Field Office as they bring their current practices into line with these procedures and maintain them at that stage.

1. Each BLM Field Office in Wyoming should assemble an Interdisciplinary (ID) team for the purpose of determining what effects, if any, grazing permit/lease renewal will have on T&E species, in addition to determining whether or not existing foundation documents (i.e., land use plans, activity plans [AMPs]) provide adequate consideration of T&E species relative to livestock grazing.

This team should include such BLM staff specialists as the Field Office manager deems appropriate, and a FWS representative.

Although the procedures presented herein are intended only to describe the ESA consultation requirements, some Field Offices may deem it appropriate to resolve other coordination and review matters (e.g., species of special concern, crucial habitats, etc.) during the same ID team review process. For this reason it may be considered appropriate by the Field Manager to also include a Wyoming Game and Fish Department (WGFD) representative in this same effort (optional). Other Field Offices may desire not to compound this ESA Sec. 7 consultation process with these other concerns at this point in time.

2. The ID team should start their review for T&E species with the individual permit(s)/allotment(s). At this stage the ID team will review and evaluate each subject permit/allotment for the presence of T&E species, and for the potential impact of proposed livestock grazing activities on the T&E species and/or their habitat that may likely be present. This effort should utilize the species lists, habitat requirements, and management guidelines provided, and all available pertinent information. We envision the outcome of this team review to fall into one of the following scenarios (See Attachment 6 for a flow chart graphic of the process):

Scenario a - No Known T&E Species Involved. Some allotments are not known to have T&E species or their critical/essential habitat present. No T&E species evaluation is required. Documentation of the nonapplicability, and notification of the FWS with a request for their written concurrence is the only requirement in these cases.

Scenario b - T&E Species Involved with Prior Consultation. Some allotments may have been the subject of prior Sec. 7 consultation. The prior consultation should be reviewed for its currency and adequacy, and modified as necessary to reflect any required operational changes. Document the evaluation rationale and outcome, and communicate it to the FWS with a request for their written concurrence.

Scenario c - Minor T&E Species Concerns with No Prior Consultation. Some allotments have not been subject to any previous Sec. 7 consultation, but they

may have some relatively minor T&E species concerns (i.e., A not likely to adversely affect - beneficial, discountable, or insignificant effects) that can be easily evaluated and addressed with application of certain conservation measures. Informal Sec. 7 consultation can be made within the ID team (i.e., FWS rep and others), and permit modifications can be immediately made as necessary to reflect any required operational changes. Document the evaluation rationale and outcome, and communicate it to the FWS with a request for their written concurrence.

Scenario d - Significant T&E Species Concerns with No Prior Consultation. Livestock grazing on some allotments will likely cause significant T&E species concerns (i.e., A likely to adversely affect) that will require intensive evaluation by the ID team, and may ultimately require major changes in the permit terms and conditions and necessary operational changes. A Biological Assessment (BA) must be prepared to address these situations. The BA is the evaluation documentation, and it needs to be sent to the FWS expressing the appropriate finding/determination. It must be remembered a A likely to adversely affect determination in the BA does not necessarily lead to a A jeopardy Biological Opinion (BO) from the FWS. The BA preparation and submission to the FWS is a portion of the consultation process, as are the letter of concurrence or biological opinion coming back from the FWS. The resulting modifications to the permit and any operational changes will be a product of this consultation.

3. Since the Land Use Plan (LUP) and Activity Plan (AP) decisions, and the associated Sec. 7 consultations, are the foundation for all the BLM T&E species management actions that follow, the ID team should continue their T&E review by examining these documents for their adequacy. Following this review the ID team needs to make a recommendation to the authorized officer for plan maintenance or amendment as follows:

- a. If nothing has changed in the planning area since the LUP or AP was completed and the consultation performed, then no further action is required beyond noting the review.
- b. If new T&E considerations necessitate a change to a plan decision, the existing BA will have to be supplemented or revised for the plan modification, and the regular consultation process will have to be completed.
- c. In cases where Sec. 7 consultation may never have been performed on a plan, a BA may have to be prepared and the regular consultation process will have to be completed.

In all cases, documentation needs to be completed or updated for your evaluation rationale and outcome, and this needs to be communicated to the FWS with a request for their written concurrence. Plans should be revisited periodically to check for currency of the ESA Sec. 7 consultation. When plan maintenance or an amendment is needed, it should be scheduled in a timely fashion, but it does not need to be done in advance of the grazing permit renewals.

DOCUMENTATION AND SUBMISSION

Examples of some tabular and figurative forms of documenting the results of the ID team deliberations are shown in Attachment 7. The format and topical considerations of a biological assessment are shown in Attachment 8. All of the above documentation and correspondence may be submitted separately by phase or scenario to the FWS, or combined into one aggregate submission by Field Office. We recommend submission of one consultation document per Field

Office for this year's grazing permit renewals. You may also combine your NEPA documentation and BA if you so desire, although this is generally a more complicated and less desirable approach. All submissions to the FWS should be sent to the WSO (930) for transmittal to the Wyoming Field Supervisor of the FWS. Copies of all correspondence should be incorporated in the allotment, activity plan, or LUP files, as appropriate.

If you have any questions about this matter, please contact either Tom Enright, Dave Roberts, or Jeff Carroll at 775-6329, 775-6099, or 775-6090, respectively.

/S/ Alan R. Pierson

8 Attachments: For a copy of attachments contact (WSO) (956) (307) 775-6089

- 1 - FWS Letter (2 pp.)
- 2 - Field Office Species Lists (11 pp.)
- 3 - Species Descriptions (9 pp.)
- 4 - Survey Guidelines (19 pp.)
- 5 - Nat'l. Forest BAs (69 pp.)
- 6 - Process Flowchart (1 p.)
- 7 - Documentation Examples (2 pp.)
- 8 - Biological Assessments (10 pp.)